

STATE OF MICHIGAN  
IN THE SUPREME COURT

MICHIGAN HOUSE OF  
REPRESENTATIVES and  
MICHIGAN SENATE,

Plaintiffs-Appellants/  
Cross-Appellees,

v

GRETCHEN WHITMER, in her official  
capacity as Governor of the  
State of Michigan,

Defendant-Appellee/  
Cross-Appellant.

Supreme Court No. 161377

Court of Appeals No. 353655

Court of Claims No. 20-79-MZ

**The appeal involves a ruling  
that a provision of the  
Constitution, a statute, rule or  
regulation, or other State  
governmental action is invalid.**

---

**GOVERNOR GRETCHEN WHITMER'S  
MOTION FOR IMMEDIATE CONSIDERATION OF HER BYPASS  
APPLICATION FOR LEAVE TO APPEAL**

Pursuant to MCR 7.311(E), Governor Gretchen Whitmer moves for  
immediate consideration of her application for leave to appeal before a decision by  
the Court of Appeals (bypass application):

1. On May 22, 2020, the Michigan House of Representatives and the  
Michigan Senate (together, Legislative Plaintiffs) filed a bypass application in this  
matter seeking leave to appeal the Court of Claims decision below.
2. On May 24, 2020, Legislative Plaintiffs filed a motion for immediate  
consideration of that bypass application.

3. Today, May 29, 2020, having filed a cross-claim of appeal in the Court of Appeals, the Governor filed an omnibus pleading containing her response to Legislative Plaintiffs' bypass application and a bypass application of her own.

4. The Governor asks this Court to immediately consider this bypass application.

5. This case warrants expedited consideration from this State's highest court because the issues involve the validity of the Governor's declaration of states of emergency and disaster during the undisputed COVID-19 public health crisis. The public health crisis persists, as do the challenges presented to the State to protect the public health, so clarity on these issues is needed quickly.

6. Two issues in particular warrant expedited consideration in light of the Court of Claims decision below: whether the Legislative Plaintiffs have standing to bring this case against the Governor, and the validity of the Governor's April 30, 2020 declaration of states of emergency and disaster under the Emergency Management Act, MCL 30.401 et seq (EMA). The Court of Claims ruled against the Governor on these two issues, creating uncertainty about the courts' jurisdiction over this case and the Governor's emergency authority under the EMA going forward.

7. Expedited final resolution of the legal questions would serve the public interest by creating certainty about the scope of the Governor's authority to respond to the ongoing public health crisis. Although the status quo will not cause substantial harm to the public because the Governor's measures to protect the

public health remain valid under the decision below, the Governor's full legal authority to respond to this public crisis is currently undercut by part of the Court of Claims ruling, which determined that certain declarations under the EMA were outside of the Governor's legislatively delegated authority.

8. A final decision by this Court would provide clarity not only to the parties, but to the citizens of Michigan during this uncertain time.

WHEREFORE, the Governor respectfully requests this Court immediately consider her bypass application and grant it.

Respectfully submitted,

B. Eric Restuccia  
Deputy Solicitor General

/s/ Christopher M. Allen  
Christopher M. Allen (P75329)  
Assistant Solicitor General

/s/ Joseph T. Froehlich  
Joseph T. Froehlich (P71887)  
Assistant Attorney General

Joshua Booth (P53847)  
John Fedynsky (P65232)  
Assistant Attorneys General  
Michigan Dep't of Attorney General  
Attorney for Defendant-Appellee/  
Cross-Appellant  
P.O. Box 30212  
Lansing, MI 48909  
(517) 335-7628  
allenc28@michigan.gov  
froehlichj1@michigan.gov  
boothj2@michigan.gov  
fedynksyj@michigan.gov

Dated: May 29, 2020